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Before the

Federal Communications Commission

Washington, D.C. 20554

JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Development of Operational,)
Technical and Spectrum Requirements)
For Meeting Federal, State and Local)
Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
For Priority Access Service)

WT Docket No. 96-86

**REPLY COMMENTS OF
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo"), which provides personal communications services ("PCS") in 11 Major Trading Areas ("MTAs"), submits this brief reply to the numerous comments filed in this proceeding on December 22, 1997.

Two central themes appear in the comments filed by the public safety community. First, public safety agencies express a critical need for the Commission to allocate expeditiously the 24 MHz of spectrum that has been reserved for them. Second, they express little interest in a priority access service provided by commercial mobile radio services ("CMRS") providers. In fact, the Association of Public-Safety Communications Officials ("APCO") recommends that further consideration of priority access service be deferred so that the Commission is not "distracted" in allocating the 24 MHz of public safety spectrum.¹

¹ APCO at 20 ("[T]he actual implementation of [priority access service], if it proceeds, needs to be in a separate proceeding where it will not complicate and overburden this proceeding with unrelated pleadings.").

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The comments indicate that the public safety community itself is not convinced that there is a pressing need for a priority access service. For example, APCO states that commercial networks “*could* be useful” in organizing relief activities in the days and weeks following an emergencies,” but that “first response” needs “will continue to be through dedicated public safety radio systems.”² Similarly, the State of California, after completing a study, has concluded that the usefulness of commercial services for “mission critical” communications is “extremely limited” because commercial systems do “not provide the level of coverage, the reliability, the availability, the restorability, nor the accessibility needed by public safety agencies”:

While public safety agencies make use of commercial services where appropriate, they are not used for “mission critical” communications. This then begs the question: if communications being carried on commercial services are not “mission critical,” then why would a public safety agency need priority access to the service?³

One thing is clear: there is no basis in the record for the Commission to require carriers to deploy a priority access service as the National Emergency Number Association (“NENA”) apparently contends.⁴ The comments demonstrate that the factual predicate for a

² *Id.* at 20 (emphasis added).

³ State of California at ¶ 52. Only the American Red Cross asserts (without explanation) that a priority access service “is critical to the *long-term*, effective, and efficient viability of disaster relief agencies working together in a coherent manner for the common good of the victims of disaster.” Red Cross at 2 (emphasis added). However, in taking this position, the Red Cross does not address, *inter alia*, the substantial capacity being added to CMRS networks, the adequacy of market forces, *etc.*

⁴ NENA’s position in this proceeding is difficult to understand. On page 1 of its comments, NENA states that cellular carriers should “be obliged” to provide a priority access service. Yet on page five, it states that there is no “reason to regulate the offering” and that “[f]ulfillment of [public safety’s] expectations would occur through the non-

mandatory commercial priority access service has not been established. As Bell Atlantic Mobile ("BAM") states: "[t]he record in this proceeding to date does not supply any factual basis for considering a priority access service":

Without hard new information showing that public safety agencies have been unable to place calls, and that this problem in fact resulting from subscriber usage levels, rather than other reasons, the Commission should not consider new rules. The only hard information that does exist shows that public safety agencies already have a wide range of ways to meet their communications needs.⁵

Moreover, even if the Commission were to assume that a problem with public safety access had existed in the past, there is no basis to assume that it will continue to exist in the future given that (1) the Commission is about to allocate additional spectrum to public safety agencies (the equivalent of a full cellular block), which should lessen substantially their need to use commercial systems;⁶ (2) cellular carriers are in the process of converting their networks to efficient digital technologies, which increase the capacity of their systems; and (3) new CMRS

commercial alternative" — that is, through the use of 24 MHz of new spectrum. Moreover, on page four NENA acknowledges that an undisclosed number of its members believe that market forces will compel the CMRS industry to meet the needs of the public safety community.

⁵ BAM at 3-4 (emphasis in original). In fact, the record evidence suggests that public safety agencies have not faced a major problem when using commercial systems. For example, the cellular carrier serving Oklahoma City states after the bombing. "97% of the calls of rescue and emergency personnel were completed on the first attempt during the three days following the explosion." Southwestern Bell Mobile Systems and Pacific Bell Mobile Services ("SBMS") at 1-2.

⁶ PrimeCo agrees with Nextel that commercial carriers could operate for public safety's benefit the 24 MHz of new spectrum more efficiently. *See* Nextel at 5-6. However, PrimeCo is not optimistic that the diverse public safety community would agree to such an arrangement, much less agree over the particular carrier which should operate the system for it.

providers like PrimeCo have built and are now expanding state-of-the-art CMRS networks which add substantial new capacity and which provide public safety officials with competitive alternatives to cellular services.⁷

Moreover, it has not been established that market forces will not satisfy any need as it arises — and that, therefore, Commission intervention (and regulation) is now necessary. Only one commenter, Compu-DAWN, asserts, albeit without factual support, that CMRS providers “lack incentives to develop technologies that assist the public safety community” and “have failed to provide a market for public safety services.”⁸ The facts in the record undermine this assertion. The industry is currently developing national priority access standards — on a voluntary basis — which standards are needed both to provide a seamless solution throughout the country and to minimize implementation costs.⁹ These comments further demonstrate the

⁷ See, e.g., BAM at 6-7; PrimeCo at 5; Nextel at 7. Indeed, even the petitioner, the National Communications System (“NCS”) undercuts the need for its proposed priority access system when it states that it is “anybody’s guess whether additional spectrum for or other developments in public safety radio will diminish the need for priority access.” NCS at 4.

⁸ Compu-DAWN at 5. Compu-DAWN miscites an FCC “White Paper” for the proposition that “the marketplace alone has not been able to generate the incentives needed for workable partnerships between commercial services and public safety agencies.” *Id.* at n.12. In this White Paper, certain FCC staffers concluded (correctly) that the market may under produce “public goods” if carriers are “unable to collect a charge” for producing the public goods. It has not been demonstrated that public safety agencies are unable to pay the costs carriers will incur in deploying and operating a priority access system — in large measure because, until standards are completed, carriers themselves do not know what costs will be involved. If it is later determined that cost recovery becomes an issue, then it may be appropriate for the Commission to become involved — *at that time*.

⁹ Given the development of national standards, carriers will have no incentive to deploy more costly, proprietary priority access systems. Thus, PrimeCo cannot agree with GTE that there is a need for the Commission to require CMRS providers deciding to offer a priority access service to adhere to the national standards being developed. See GTE at 11.

concrete steps the CMRS industry has taken to assist the public safety community during emergencies.¹⁰ Indeed, GTE notes that CMRS carriers not providing a priority access service “will be at a competitive disadvantage vis-a-vis other wireless carriers in the CMRS marketplace.”¹¹ Thus, if there is a demand for a commercial-based priority access service does materialize, the CMRS industry is ready, willing, and able to meet this need.¹²

PrimeCo also cannot agree that the time is ripe for the Commission to prescribe rules governing the prioritization structure for a market-based priority access service.¹³ At the outset, it appears that public safety agencies still do not agree amongst themselves over the priority levels which should be used.¹⁴ Moreover, Commission codification of priority levels could actually harm the public interest. As BAM observes, each disaster or emergency situation

¹⁰ See, e.g., BAM at 4 n.2 and 5 n.3 (describing assistance it provided following the TWA Flight 800 crash and Hurricane Fran); SBMS at 2 (both cellular carriers serving Oklahoma City provided free handsets to rescue and emergency personnel following the bombing); PrimeCo at 10 (providing “cell on wheels” for Jarrell, Texas tornado). Moreover, as noted in the comments of Southwestern Bell Mobile, the public is very willing to cooperate in voluntary efforts to ensure capacity for emergency situations. SMBS at 1-2.

¹¹ GTE at 6.

¹² Because there is no justification for mandatory rules at this time, PrimeCo does not address in reply the numerous issues which the Commission would necessarily have to address if it were to impose a priority access requirement, including the important cost recovery issue. See, e.g., Nextel at 7 n.8; SBMS at 2-3. In this regard, efforts by certain utilities to seek emergency access underscore the problems with efforts to establish a mandated system for “public safety” purposes over commercial networks.

¹³ Commenters favoring such rules include National Communications System (“NCS”) at 3-4 and SBMS at 4-5.

¹⁴ See, e.g., California Public-Safety Radio Association at 6 (recommending that state and local emergency providers have the same priority level as federal defense and law enforcement agencies).

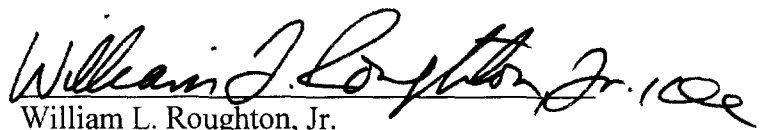
is different; in some cases federal agencies take the lead; in others, local or state officials may take the lead.¹⁵ In these circumstances, PrimeCo agrees with GTE that the maximum flexibility needed by the public safety community would best be achieved allowing the President's National Security Telecommunications Advisory Committee the authority to address appropriate priority access levels rather than for the Commission to codify rigid procedures in its rules.¹⁶

CONCLUSION

The comments confirm there is no factual basis for imposition of any mandatory priority access rules. Given the pending allocation of 24 MHz of new spectrum to the public safety community, it is not even clear the public safety community is even interested in such a commercial priority access system. However, if a need does develop, the CMRS industry stands ready, able, and willing to meet this need — on a voluntary basis.

Respectfully submitted,

**PRIMECO PERSONAL COMMUNICATIONS,
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¹⁵ BAM at 10-11.

¹⁶ See GTE at 15-16.